

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Civil Action No. 5:11-CV-459-F**

PENTAIR WATER POOL AND SPA, INC.
and DANFOSS DRIVES A/S,

Plaintiffs,

v.

HAYWARD INDUSTRIES, INC. and
HAYWARD POOL PRODUCTS, INC.,

Defendants.

**ORDER GRANTING CONSENT
MOTION TO SEAL PLAINTIFFS'
MEMORANDUM IN OPPOSITION
TO DEFENDANTS'
AMENDED MOTION TO STAY
ACTION PENDING
REEXAMINATION, SUPPORTING
DECLARATION OF JOHN B.
SCHERLING AND CERTAIN
EXHIBITS THERETO, AND
MEMORANDUM IN SUPPORT OF
MOTION TO SEAL**

[DE-201]

Before the Court is Plaintiffs' Consent Motion to Seal Plaintiffs' Memorandum in Opposition to Defendants' Amended Motion to Stay Action Pending Reexamination, Supporting Declaration of John B. Scherling and Certain Exhibits Thereto, and Memorandum in Support of Motion to Seal.

[DE-201 & -202]

Having reviewed Plaintiffs' Motion and supporting Memorandum, the Court FINDS that

(1) Plaintiffs' Memorandum in Opposition to Defendants' Amended Motion to Stay Action

[DE-193]

Pending Reexamination; (2) the Declaration of John B. Scherling in Support of Motion to Stay

[DE-194]

Action Pending Reexamination; (3) Exhibits to 5, 15, 35, 44, 45, 50, 51, 59-64 and 68 to the

[DE-194]

Scherling Declaration; and (4) Memorandum in Support of Consent Motion to Seal Plaintiffs'

Memorandum in Opposition to Defendants' Amended Motion to Stay Action Pending

Reexamination, Supporting Declaration of John B. Scherling and Certain Exhibits Thereto, and


[DE-202]

Memorandum in Support of Motion to Seal, contain either (a) references to information that has been designated by Plaintiffs or Defendants as "CONFIDENTIAL," "ATTORNEYS' EYES

ONLY” or the like on the grounds that it is sensitive business, financial or technical information, including information regarding development of Plaintiffs’ or Defendants’ products and related materials and market share information concerning those products; (b) additional confidential information related to the matters described in the Memorandum in support of the instant motion; or (c) both.

A motion to seal should be granted when the right to access to the documents, as protected by both the common law and the First Amendment, is not violated. *Stone v. Univ. of Md. Med. Sys. Corp.*, 855 F.2d 178, 180 (4th Cir. 1988). The presumption of a public’s right to access may be overcome when there is a competing interest that outweighs the interest to access. *Id.* Here, such competing interests exist. Specifically, the significant interests of each of the parties in keeping the information at issue confidential outweighs the minimal interest of the public in access to information of this type, which is normally maintained as confidential by business entities. In light of the foregoing and because the alternatives to sealing are inadequate and the requirements of the Court’s Policy Manual have been met, the Court GRANTS Plaintiffs’ Consent Motion to Seal Plaintiffs’ Memorandum in Opposition to Defendants’ Amended Motion to Stay Action Pending Reexamination, Supporting Declaration of John B. Scherling and Certain Exhibits Thereto, and Memorandum in Support of Motion to Seal and
[DE-193]
HERBY ORDERS THAT: (1) Plaintiffs’ Memorandum in Opposition to Defendants’ Amended
[DE-194]
Motion to Stay Action Pending Reexamination; (2) the Declaration of John B. Scherling in
Support of Motion to Stay Action Pending Reexamination; (3) Exhibits to 5, 15, 35, 44, 45, 50,
[contained in DE-194, -196, -197, -198 & -199]
51, 59-64 and 68 to the Scherling Declaration; and (4) Memorandum in Support of Consent
[DE-202]
Motion to Seal Plaintiffs’ Memorandum in Opposition to Defendants’ Amended Motion to Stay
Action Pending Reexamination, Supporting Declaration of John B. Scherling and Certain
Exhibits Thereto, and Memorandum in Support of Motion to Seal shall remain under seal.

This the 17th day July, 2012.



The Honorable James C. Fox
Senior United States District Judge